

REMARKS/ARGUMENTS

In the Examiner's Answer, the Examiner has presented new grounds of rejection. Specifically, the Examiner has set forth on page 3 of the Answer the following new grounds of rejection:

Claims 128-130 are rejected under 35 U.S.C. § 102(b) as being anticipated by Ezzat (GB 2,250,266).

Claims 131-146 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ezzat (GB 2,250,266) in view of Mohlenkamp Jr. et al. (U.S. 5,120,563), and Google Groups (12/9/1999).

Pursuant to 37 C.F.R. § 41.39(b), Applicant specifically requests that the prosecution be reopened before the primary Examiner and therefore Applicant has filed a reply under 35 U.S.C. § 1.111 with the amendments as set forth with the amendments to the claims beginning on page 2 of this paper. More specifically, claim 128 has been amended to include the limitations of claims 128-133. Additionally, claim 128 has been amended to specify that the package is a microwave package and wherein the food product requires finishing by the consumer in order to pop the popcorn with microwaves and heat the sucralose. Additionally, claim 128 has been amended to include a flavoring selected by the consumer as was previously found in claim 144. Claim 135 has been amended to include the limitations of claims 135 and 136 and, additionally, to specify that the package is a microwave package containing the unpopped popcorn and the sucralose, while the popcorn can be popped and the sucralose heated within the package through the use of microwaves. Claim 138 has been amended to include the limitations of claims 138 and 140-143 which include limitations directed to microwave cooking a food product. Finally, claims 129-133 and 136 have been canceled and claim 144 has been amended to delete the flavoring selected by the consumer contained in the package but that limitation has been moved to claim 128. Also, the dependencies of claims 134 and 144 have been changed.

Response to New Grounds of Rejection

Claims 128-130 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Ezzat (GB 2,250,266). This rejection is respectfully traversed. Applicant respectfully submits that in regards to claim 128, claim 128 has been amended to at least include limitations from claims 131-133. Since these claims were not included in the Examiner's rejection under 35 U.S.C. § 102(b), Applicant respectfully submits that the amendment has overcome this particular rejection. In regards to claims 129-130, Applicant has canceled these claims and therefore respectfully submits that the rejection is now moot.

Claims 131-146 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Ezzat (GB 2,250,266) in view of Mohlenkamp Jr. et al. (U.S. 5,120,563) and Google Groups (12/9/1999). This rejection is respectfully traversed. With regards to claims 131-133, 136 and 140-143, Applicant notes that these claims have been canceled and therefore the rejection is moot. As for the remaining independent claims, they are discussed more fully below.

Regardless, as amended, claim 128 is considered allowable because the combined prior art references do not teach or suggest all the limitations of claim 128. First of all, there is no teaching or suggestion in the applied prior art to make a customized food product analogous to the present invention. The Examiner has asserted that the product in Ezzat is customized simply because food packages containing butter, salt, or other combinations thereof have been dispensed into a container with unpopped kernels. Applicant respectfully disagrees. Ezzat discusses a sealed bag containing corn kernels and spices which are popped to form classic popcorn. No selection process is performed by the consumer in determining what ingredients, flavorings and additives went into the package or what type of package is utilized. At best, the consumer merely decides whether or not to buy a pre-packaged food product. As set forth in Ezzat, "the package consists of a paper bag inside of there is a certain amount of corn kernels and spices necessary so that, by heating, classic popcorn is formed". See page 1, line 6-10 of Ezzat.

There is simply no reason a consumer would choose a food ingredient, flavoring, an additive and a package as required by claim 128.

With respect to the inclusion of sucralose in the overall combination invention, this feature is seen to be particularly important to the overall invention. As admitted by the Examiner, Ezzat does not disclose the use of sucralose. Instead, the Examiner has relied on the Google Groups reference which only teaches sprinkling Splenda^R (sucralose) on previously popped popcorn instead of Sugar Twin^R. At best, this combination would suggest sprinkling sucralose on the popcorn of Ezzat after the popcorn is cooked. Claim 128 requires sucralose to be pre-packaged with the popcorn. Further, claim 128 recites that the food product requires finishing by the consumer in order to pop the popcorn with microwaves and heat the sucralose. Nowhere do the applied references refer to a microwave packaging wherein microwaves are used to pop the popcorn and, in the process, the sucralose is heated.

Turning now to claim 135, as indicated above, the inclusion of sucralose as a pre-packaged sweetener with popcorn is important in accordance with the invention. More specifically, claim 135 recites a microwave package containing unpopped popcorn and sucralose. Since the sucralose is added to the popcorn prior to the popping of the popcorn, the sucralose is heated when the popcorn is popped rather than just being sprinkled on the later to get a desired level of sweetening. The Examiner has not contended that sucralose and sugar are equivalent. See page 21 of the Answer. However, the Examiner considers that alternatives to sugar have been utilized for sweetening food products. Sugar and sugar substitutes have different chemical structures and react in different ways to being processed, consumed and/or heated, especially by a microwave. There is no suggestion in Ezzat to the desirability to using a sugar substitute for any purpose and the Google Groups reference actually teaches away from applying sucralose to popcorn prior to popping the popcorn because it specifically teaches adding the sucralose after the popcorn is popped.

Turning now to claim 138, method claim 138 requires that sucralose has to be pre-packaged with popcorn for distribution and, further, that the product be finished by the consumer by microwave cooking the food product in the packaging in order to pop the popcorn while heating the sucralose. The Examiner has cited Google Groups for the proposition of adding sucralose to popcorn. However, numerous sweeteners available on the market cannot be utilized in the same manner as sugar. This is even more important when the cooking method being utilized is microwave energy. Unlike conventional cooking which utilizes convection principles, microwave heating involves the application of wavelength energy to excite molecular bonds and thus heat the food. The effective of microwaves on food additives can be vastly different than the effective conventional cooking methods on the same additives. For example, aspartame, one of the sweeteners pointed out by the Examiner, is thermally unstable under microwave conditions and is unsuitable as a sugar substitute in microwave cooking. The Google Group reference simply does not teach utilizing sucralose as a sugar substitute in cooking, let alone in microwave cooking.

In regards to the rejection of claim 128 under 35 U.S.C. § 112, second paragraph, as set forth in the M.P.E.P., definiteness of claim language must be analyzed, not in a vacuum, but in light of: a) the contents of a particular application disclosure; b) the teaching of the prior art; c) the claim interpretation that would be given by one possessing an ordinary level of skill in the pertinent art at the time the invention was made. See M.P.E.P. § 2173.02. The Applicant respectfully submits that the term "customized" when read in the proper light based on the disclosure, has a clear and definite meaning such that the rejection of claim 128 under § 112, second paragraph should be withdrawn. The Examiner's attention is also directed to the arguments presented in the Appeal Brief on this matter. Basically, the consumer selects what ingredients or components go into the package, thereby "customizing" the package. It is as simple as that.

The Applicant submits that the rejection of claim 128 under 35 U.S.C. § 120(e) as being anticipated by U.S. Patent No. 5,997,924 to Olander Jr. et al. has been rendered moot by the amendments. In regards to the remaining dependent claims, they are

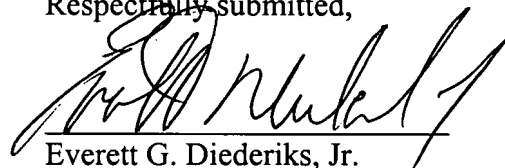
considered at least allowable by virtue of their dependency and also do present additional patentable features.

Conclusion

It is respectfully submitted that none of the prior art, when taken single or in combination, teaches a packaged food product containing popcorn, applied with sucralose and that other features of the invention, particularly the consumer customization, the addition of further sweetener and the subsequent microwave cooking, even further distinguish the invention from the known prior art.

As always, if the Examiner should have any additional questions or concerns regarding this matter, he is cordially invited to contact the undersigned at the number provided below in order to further prosecution.

Respectfully submitted,



Everett G. Diederiks, Jr.
Attorney for Applicant
Reg. No. 33,323

Date: October 9, 2007
DIEDERIKS & WHITELAW, PLC
12471 Dillingham Square, #301
Woodbridge, VA 22192
Tel: (703) 583-8300
Fax: (703) 583-8301